

# HOUSE . . . . . No. 975

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By Mr. Rushing of Boston, petition of Byron Rushing and others  
for legislation to clarify the sealing of non-conviction criminal  
offender record information. The Judiciary.

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## The Commonwealth of Massachusetts

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### PETITION OF:

Byron Rushing  
Alice K. Wolf

Gloria L. Fox

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In the Year Two Thousand and Five.

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### AN ACT CLARIFYING THE SEALING OF NON-CONVICTION CRIMINAL OFFENDER RECORD INFORMATION.

*Be it enacted by the Senate and House of Representatives in General  
Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. The General Court hereby finds and declares  
2 that:

3 (1) The current system of maintaining and disseminating Crim-  
4 inal Offender Record Information (known as CORI) has become  
5 an all-but-impossible barrier for most ex-offenders and other indi-  
6 viduals with CORI with respect to securing employment, housing,  
7 education, training, credit and other necessities of mainstream  
8 society, so that they can become productive and tax-paying citi-  
9 zens or residents of the Commonwealth;

10 (2) While the Commonwealth and the Federal Government  
11 spend millions of dollars to train and assist unemployed persons  
12 to enter the workforce, these efforts are unacceptably frustrated by  
13 the current CORI system, so that the Commonwealth is spending  
14 the taxpayers' money to fund governmental efforts which are  
15 often in contradiction to each other; and

16 (3) In addition to the state interest in safeguarding the reputa-  
17 tions and privacy of the Commonwealth's residents, there is, col-  
18 lectively, a compelling state interest to seal stale or otherwise  
19 unpredictable criminal records, which state interest may, in partic-

20 ular cases, be ruled by a judge to overcome what the federal  
21 courts have found to be a First Amendment interest in favor of  
22 keeping these governmental records available to the more than  
23 ten thousand organizations which now have access to CORI.

1 SECTION 2. Section 100C of chapter 276 of the General Laws  
2 is hereby amended by striking the first two paragraphs and  
3 inserting the following paragraphs:—

4 In any criminal case wherein a no bill has been returned by the  
5 grand jury the commissioner of probation, with respect to such  
6 case, shall seal any court appearances and dispositions recorded in  
7 his files, and the clerk and the probation officers in the courts in  
8 which the proceedings occurred or were initiated shall likewise  
9 seal the records of the proceedings in their files.

10 In any criminal case wherein the defendant has been found not  
11 guilty by the court or jury; or a finding of no probable cause has  
12 been made by the court; or a nolle prosequi has been entered; or a  
13 dismissal has been entered by the court, except where (whether or  
14 not such dismissal is preceded by a continuance without a finding)  
15 such dismissal is preceded by a term of active probation as to  
16 which the court ordered the assignment of a probation officer to  
17 whom the defendant was required periodically to report; the court  
18 shall consider sealing the record at a hearing initiated by the  
19 former defendant's filing at any time after the case's final disposi-  
20 tion, on a form provided by the court, a petition for sealing.

21 In making its decision court shall consider (a) the facts and  
22 arguments presented by the petitioner in favor of sealing, if any;  
23 (b) the facts and arguments presented by an objector, if any, who  
24 timely filed an objection with a reason or reasons for the objection  
25 relating to the interests of public safety or in favor of the general  
26 public interest in access to governmental records, as fostered by  
27 the First Amendment of the U.S. Constitution; (c) the findings and  
28 declaration of the General Court as set forth in SECTION 1 of this  
29 Act.

30 If the court concludes that sealing the record would be in the  
31 interests of substantial justice and that there is a compelling state  
32 interest to seal the record which overcomes the general public  
33 safety or public access interests, the court shall order that the clerk  
34 and the probation officers in the courts in which the proceedings

35 occurred or were initiated seal the records of the proceedings in  
36 their files and send notice thereof to the commissioner of proba-  
37 tion, who shall seal the case record in the probation central file.